

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
BOARD OF CONTRACT APPEALS

Washington, D. C.

In the Matter of:

VIVIAN SMITHEY,

Respondent

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: HUDBCA No. 87-2444-D46
: (Docket No. 87-1145-DB)
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For the Government

DETERMINATION

Statement of the Case

By letter dated May 12, 1987, Joseph P. Garaffa, Manager of the Memphis, Tennessee office of the Department of Housing and Urban Development ("HUD"), imposed a Temporary Denial of Participation ("TDP") on Vivian Smithey ("Smithey") pursuant to 24 C.F.R. §24.18 for a one-year period within the HUD Single Family Insurance Program. The reasons cited for imposition of the TDP were that Smithey had altered verifications of deposit in two case files submitted to HUD for mortgage insurance and had forged the signature of a bank officer. Smithey requested an informal hearing on the TDP, which was held on May 20, 1987. The TDP was affirmed on June 2, 1987. Thereafter, Smithey made a timely request for a formal hearing on the TDP pursuant to 24 C.F.R. §24.18(a)(5)(iv) and 24.7(b). A hearing was held on September 9-10, 1987 in Memphis, Tennessee.

Findings of Fact

Vivian Smithey was employed at Bailey Mortgage Company ("Bailey"), a HUD-approved mortgagee, from November, 1985 until the end of 1986, first as a supervisory loan processor until March 31, 1986 and then as an account representative, commonly known as an "originator," from April, 1986 until she left Bailey and joined Amerifirst, another mortgagee, as an originator. (Exh. G-13; Tr. 310-311.) Smithey began her employment with Bailey at the Oakleaf branch in Memphis, Tennessee, which was the main office. Initially, she processed loans for Rema Nance, who was the Oakleaf branch manager and a Vice President of Bailey. Shortly after Smithey was promoted to originator, she was transferred to Bailey's Cordova branch office and was to be the Cordova branch manager. However, Smithey was not happy at the Cordova branch and never actually assumed the duties of branch manager. She returned to the Oakleaf branch sometime around late May or early June, 1986. (Tr. 346-347.)

At Bailey Mortgage, it was the role of the loan originator to generate business by obtaining applicants for loans. When a loan applicant was found, the loan originator would take down the information on the initial loan application form after conducting an interview with the borrower-applicant. The originator would then give the initial application to a "set up" secretary. From then on the originator would check on the status of the loan application but would have little other contact with the application process. (Tr. 57, 58, 122, 187, 206.)

The "set-up" secretary would type up and mail verifications of employment ("VOE"), verifications of deposit ("VOD"), request a credit report, and place the requested information in the application file when it was returned to Bailey. When all of the requested information was collected, the "set-up" secretary would give the file to a loan processor. (Tr. 122.) The loan processor would check the file for sufficiency and then compare the information on the verifications and credit report with the information on the loan application. If a gift letter was needed to show the source of funds for closing, the processor would make sure it was on file. A Form 9-2900, which is the application for HUD-FHA mortgage insurance, would be prepared and signed by the loan processor. The processor would also calculate the borrower's monthly available income and the mortgage payments. After these tasks were completed, the loan processor would fill out the mortgage credit analysis worksheet and send the file to the underwriting department for approval. (Tr. 122, 207-208.)

The underwriter would make sure that the file was complete, the loan processor had properly filled out the required forms, and the borrower qualified for the mortgage. (Tr. 135.) If anything was missing or needed to be reverified, the underwriter would write up an underwriting sheet directing the loan processor to obtain more information or to reverify funds available to close. However, when the office was particularly busy or when time was of the essence, the underwriter would call the processor

or walk down to the processor's office to direct the additional processing, rather than write up an underwriting sheet. (Tr. 141, 163.) If reverification was directed by the underwriter, the loan processor would have a reverification form typed and mailed. Once the file was ready for approval, the underwriter would sign and date the mortgage credit analysis worksheet prepared by the loan processor, and also sign the direct endorsement approval sheet which would set out any remaining conditions for approval. When the loan package is returned to the underwriter after the loan has closed, the underwriter signs and dates the underwriter's certification that the loan has been properly originated. (Tr. 151-153.)

The formal and informal compensation of the employees at Bailey differed dramatically. The loan originators were the highest paid employees, working on a commission of 1/2 percent of the value of each loan closed. The originators were guaranteed a draw of \$1,500 a month, even if the monthly commission was not that high. They would not get a commission if the loan did not close. (Tr. 67-68, 299-300.) When Smithey became a loan originator, the real estate market was very good. She originated about 400 loans and earned about \$85,000 in about eight months. (Tr. 326-327). In contrast, loan processors were paid on a salary basis, earning about \$16-18,000 a year in a good market. (Tr. 327.) This figured included sharing in a pool based on loans closed that would give each participating processor \$450-500 a month over the base salary. (Tr. 69). The "set up" secretary did not share in the pool (Tr. 124.) Although it was not an office policy, most loan originators also paid their processors an additional sum for each loan closed. Smithey paid her processors an additional \$25 per loan closed, plus a bonus in a "good" month. (Tr. 225, 301-303.) She also paid the "set up" secretary, ██████ Gnusche, about \$300.00 a month. (Tr. 188.) The underwriters were paid on a straight salary basis and received no incentive pay, formal, or informal, for loans closed (Tr. 162.) Smithey received no additional pay for being branch manager of the Cordova branch (Tr. 347).

When Smithey was first transferred to the Cordova branch, the processor assigned to her was ██████ Hughes. Hughes also had done some processing for R ██████ Nance. (Tr. 167, 228.) Smithey was unhappy with Hughes' work as a loan processor, and requested that another processor be assigned to her. (Tr. 345-346.) Hughes was being pressured by her co-workers because she was too slow, prepared files at the last minute and would sometimes resort to shortcuts (Tr. 353-354). ██████ Cummings was employed as a loan processor at the Cordova office on April 16, 1986 and started processing loans for Smithey in mid-May, 1986. (Tr. 355; G-13.) Cummings was an experienced loan processor with a good reputation. Smithey requested that she be assigned as her processor. When Cummings began processing for Smithey, Hughes gave her a number of files "in process," as well as new files.

Cummings reported to Smithey that the "in process" files were "a mess." (Tr. 356-357.)

During the period in which Smithey worked at the Cordova branch, she originated the two loans that are the subject of this case, referred to as the Brown loan and the Halford loan. The two loans came to the attention of Security Savings and Loan, the parent company of Bailey Mortgage, during the routine sampling audit of 10% of all loans originated per month. The internal auditor determined that two verifications of deposit, one in the Brown file and one in the Halford file, had apparently been altered. He also found similar problems with four other files, none of which were Smithey's. At least two of these other loans had been originated by ██████ Nance. (Tr. 52-53, 60-61.)

The auditor found that the VOD in the Halford file had apparently been mailed back to the First National Bank, West Memphis, for an update. The apparent reverification request and reverification were made on the same form as the original verification, with the typed notation "please re-verify funds deposited 5/16/86" and the apparent signature of Smithey. The auditor called the bank officer whose name appeared on the reverification form. The bank officer, Frank Wallace, told the auditor that he had not reverified the Halford's cash on deposit, had not signed the reverification, had not received a request for reverification, and the middle initial on the reverification purporting to be his was not his correct middle initial. (Tr. 55; G-2.) The parties stipulated to the admissibility and truth of Wallace's sworn statement that he did not sign the reverification request and that his signature was forged.

The auditor found that a request for reverification of deposit in the Brown loan had also apparently been falsified. The apparent reverification had also been entered on the original request for verification. The request form had typed on it "Handcarried by Vivian Smithey - 5/19/86." The auditor spoke with Mary Yancey at Farmers and Merchants Bank in Marianna, Arkansas, whose signature appeared as the bank officer reverifying funds the Browns had on deposit at the bank. Yancey denied that she had either signed or been presented with the request for reverification of the Brown's bank funds, nor had anyone from Bailey hand-delivered such a request to her. (Tr. 57; G-1.) Marianna, Arkansas is 75 miles from Memphis, and it would have been unusual for anyone to have handcarried such a request even if time was short for a reverification (Tr. 57.) The parties stipulated to the admissibility and truth of Yancey's sworn statement that she did not sign the reverification request, and that her signature was forged.

Based upon the auditor's report on all six "problem" loan files, Security Savings hired a private investigator, Gene Petrakis, to conduct an investigation. Petrakis conducted face-to-face interviews with some of the Bailey employees

involved in the set up, processing or origination of the loans in the course of his investigation. (Tr. 54, 71; G-12.) Petrakis questioned ██████ Cummings, who was the loan processor whose signature appeared on the Form 9-2900 in the Halford file, and ██████ Gnuschke, who was the "set up" secretary for both the Brown and Halford files, as well as one more of the loan files under investigation. (Tr. 88, 188, 210; G-12.) Gnuschke's signature was on both of the forged documents. (G-1, 2.) Petrakis did not interview ██████ Hughes, who was the loan processor for the Brown file and who had also probably worked on the Halford file before Cummings took over as Smithey's processor. (Tr. 352; G-12.) Petrakis did interview Smithey and ██████ Nance (G-12.) Smithey readily agreed to take a lie detector test when Petrakis asked her if she would be willing to do so. (G-12.) However, no lie detector test was ever administered to any of the Bailey employees in the course of this investigation.

Petrakis concluded in his report that ██████ Nance was unconcerned about why or who altered the loan documents. In each case shown to her by Petrakis, including the two Smithey had originated, she observed that there was no reason for the alterations or reverifications because the borrowers already would have qualified for the loans without the information on the altered documents. Petrakis concluded that Gnuschke did not know about the alterations but that she would have protected both Smithey and Nance if she did have any information. Petrakis also concluded, based on Smithey's demeanor only, that she had knowledge of who had made the alterations, although she denied any knowledge and also noted that the alterations were not necessary to qualify the borrowers for the loans. Smithey's reactions of both surprise and vociferous denial appeared "feigned" to Petrakis, as noted in his report. (G-12.)

The officials at Security Savings decided that Petrakis' report implicated Smithey and a decision was made to dismiss her. A complicated series of events occurred in which Smithey went on vacation after being told that she would be fired, Nance did not process the termination papers, Smithey obtained a position at Amerifirst as an originator and resigned from Bailey. The officials at Security Savings did not know that the termination papers had not been processed and continued to believe that Smithey had been fired. Those same officials notified the HUD Memphis office of the audit, Petrakis' report and Smithey's termination. Based on those submissions by Security Savings to the HUD Memphis office, a TDP was imposed on both Smithey and ██████ Nance, who had by that time left Bailey, and gone to Amerifirst as its manager. (Tr. 71, 77-83, 88, 100, 176-182.)

All of the witnesses involved with the loans in any way denied having any knowledge of who had altered the VOD's in the Brown and Halford files or why it had been done. No one remembered any oral direction from ██████ Belnap, the underwriter, to reverify the monies on deposit in either the

Brown or Halford case, and there was no written directive from Belnap to reverify in either file. Belnap testified, in essence, that she assumed that she directed such reverifications because in both of the files she reviewed at the hearing, she found that the borrowers might not have had enough cash on hand to close, based on the materials in the file at the time they were first given to her. (Tr. 136, 150, 163-164, 174-176, 192, 209, 215, 235-237, 325, 336.)

Belnap first examined the Brown file on May 19, 1986, based on her signature on the residential appraisal report. Belnap approved the Brown file on May 21, 1986. The loan application (Form 9-2900) was signed by [REDACTED] Hughes as the loan processor on May 19, 1986. The 9-2900 shows that the Browns had \$3663 cash in assets to close. Likewise, the mortgage credit analysis worksheet shows \$3663 cash on hand, which was a total of the amount on the original verification of deposit plus the \$900 gift letter dated May 14, 1986 in the file. No changes were made on the mortgage analysis worksheet after Belnap's approval on May 19, 1986. Belnap signed the direct endorsement approval for the Brown loan on May 21, 1986 without setting out any conditions for final approval. She did a post closing review of the file on May 28, 1986. (Exh. R-A; Tr. 151-154.)

Based on the mortgage credit analysis worksheet, the Browns needed only \$1800.90 to close. Belnap testified that although the Brown file showed that they had more than double the amount needed, she would have asked for reverification of that amount because the Browns had paid a lot of bills after the original verification of deposit had been returned and she knew they did not have that much on hand. The bills paid totalled approximately \$1200. Even if that amount were subtracted, the remaining funds as originally verified on hand plus the gift letter would have been far more than enough to close. Belnap stated that she did not give the Brown's "credit" for the gift letter because it was dated after the verification of deposit and because it had not been "verified." The gift letter was, however, in the files when it was first reviewed by Belnap on May 19, 1986, and it was clear that it had been presented directly to Colonial and not the bank that verified the cash on hand. I find that there was no reason to reverify deposits in the Brown case because there was at all time evidence of sufficient case on hand to close. (Tr. 136-138, 160; Exh. R-A (10), (12), (13).)

Belnap had signed various documents in the Halford file on May 13, 16 and 27, 1986. She signed the mortgage credit analysis worksheet for the Halford file on May 27. The Halfords needed \$573 to close. The mortgage credit analysis worksheet shows that the Halfords had \$373 cash assets to close, the amount indicated on the original verification of deposit. The Form 9-2900 shows assets in cash of what looks to be \$575.00, the "7" of which appears to be handwritten rather than typed. [REDACTED] Cummings, the

loan processor who signed the Form 9-2900 loan application on May 14, 1986, had no recollection of whether she had made that notation or when it had been made. Belnap required that all changes be typed, and that the numbers on the mortgage credit analysis worksheet and the Form 9-2900 had to match. The amount of assets on the Form 9-2900 and the mortgage credit analysis worksheet did not match. There were no changes made on the mortgage credit analysis worksheet. Belnap signed the direct endorsement approval sheet on May 27, 1986 and listed no additional conditions for closing on it. The "reverification" of deposit purporting to have been made about May 16, 1986 by ██████ Wallace showed that the Halfords had \$549.01 cash on hand, which was still \$24.00 short to close. The file also contained a letter dated May 20, 1986, from ██████ Haney, the real estate agent for the Halfords, stating that the Halfords had given her an additional \$25.00 cash to apply toward the closing, giving a total of \$125.00 cash in the realtor's trust fund for closing. Belnap approved the Halford file based on the "reverified" deposit, the letter from ██████ Haney, and the other documents in the file. She testified that she is sure that she would have been asked for reverification because the Halfords would have been \$200 short to go to closing, based on their file as of May 14. (Tr. 143, 147, 155-158; Exh. R-B(3), (12), (14), (16), (17)). I find that there would not have been sufficient funds for Belnap to have approved the Halford loan for closing without the "reverification" of deposit.

There was not a single witness who had specific knowledge of who, if anyone, requested reverification of either the Brown or Halford assets for closing. Belnap was not the only Colonial employee with the authority to direct reverification and she had no evidence or specific recollection of having made such a direction - she just assumed that she had. Hughes testified that if she found there were insufficient funds to close, she would check with the loan applicant and then send out a reverification request to the bank on her own authority. (Tr. 230-231.)

Deborah Gnusche, who did the "set up" of the files in both Brown and Halford, denied that she was ever asked by anyone to do any reverifications in either case. She testified that she did not type "handcarried by Vivian Smithey - 5/19/86" on the Brown VOD, nor did she type in any of the alleged reverification data. She also testified that she did not type "Please re-verify funds deposited 5-16-86." or "please disregard previous statement" on the Halford VOD or the actual "reverification" data on it. Gnusche, as "set-up" secretary, would not have been asked to mail out reverification requests; that was the role of the loan processors. The loan processors would also file them when received. Both ██████ Hughes and ██████ Cummings, the loan processors on Halford and Brown, denied that they typed any of the "reverification" material on the VOD's. Neither had any knowledge of who had done it, when it was done, at whose direction, or why. Cummings testified that Smithey had never

told her to add information to a verification form for any case, and had not heard her direct anyone else to do so, either. Likewise, Hughes testified that she did not alter either form, she never heard Smithey direct anyone else to do so, and Smithey never told her that she could use a "short cut" form of reverification if time was of the essence. (Tr. 209, 215, 235-237.)

Smithey denied any knowledge of alteration of the VODs in the Brown and Halford files. She testified that she did not place any of the "reverification" material on them, nor did she direct or hint to anyone else that they should do so. Smithey, Cummings and Nance all observed that there would have been no reason to reverify the Brown assets, in any event, because there were clearly sufficient funds to close. All of the witnesses agreed that the formats of the purported reverifications were unusual because they were done on the same forms as the original VODs. However, ██████ Taylor, the officer manager in the Oakleaf office in 1986, testified that office policy allowed the use of that format at the time of the Brown and Halford loans. The policy was changed later to require that a new form be used for reverification requests. (Tr. 311-314, 319, 200, 209, 232-233, 290; Exh. G-12.)

With one exception, Smithey's co-workers had a high opinion of her professional abilities and ethics. ██████ Nance declined to fire Smithey until she had had a full opportunity to defend herself because "she could not imagine" that Smithey had altered the VODs. ██████ Magruder, the real estate agent in the Brown case, testified that Smithey had an excellent reputation with Magruder's company and always did business the "right way," whether the loan closed or not. If a loan application needed reverifying, Smithey would make everyone wait until it was done, even if it meant not closing. ██████ Haney, the real estate agent on the Halford case, often used Smithey as an originator because she gave better service and fewer problems. (Tr. 178, 238, 247-248, 252.)

The one co-worker who held a low opinion of Smithey, ██████ Russell, resented Smithey and was jealous of her because she believed that Smithey had stolen some of her clients from her. Russell had complained to both ██████ Nance and ██████ Taylor about Smithey's aggressive tactics in wooing away clients she believed were hers. ██████ Russell had no direct knowledge of any of the alleged acts by Vivian Smithey that are the basis for this TDP. Nonetheless, it was statements made by Russell to ██████ Garaffa and ██████ Blair that played significant roles in both men's opinion of Smithey's veracity and ethical reliability. Garaffa had initiated the call to Russell because he knew her and was trying to decide what to do about Smithey. He was apparently unaware of the bad relations between Russell and Smithey. (Tr. 73.) ██████ Blair recalled that Russell initiated the call to him. She told him that Smithey had admitted her guilt to

Russell. Blair was, however, confused about when Russell spoke to him about Smithey. It was after Smithey had already left Colonial. Russell testified that when the private investigator came to Bailey to interview certain employees, Smithey came up to Russell in a "tizzy," very upset, saying "what am I going to do?" Russell testified that she asked Smithey if she know about "it" and Smithey nodded her head to indicate yes. Russell testified that, based on that exchange, she "got the impression" that Smithey had knowledge of "it" and later told Garaffa that Smithey had admitted to her that she was "guilty." M [REDACTED] Russell actually had no idea of what Smithey was "guilty" of. She thought at the time that it may have involved getting final inspections for properties. Russell did not know specifically what Smithey had been charged with until she was told by the presiding officer at the hearing. Furthermore, she was not sure whether Smithey indicated by nodding her head that she "knew about it" or that she was "involved in it." (Tr. 106-108, 112, 114-117, 21, 40, 47, 72-73, 85.)

Smithey was aware that Russell did not like her because Russell accused Smithey in front of a realtor of stealing her business. She repeated the accusation to Smithey on a number of occasions. Smithey testified that that she encountered Russell in the hallway right after Smithey had left the room in which Petrakis had interviewed her. Russell asked Smithey what was going on. Smithey's recall of the conversation is that she told Russell that it involved some problem files and she was the originator for two of them. Smithey denied that she admitted to Russell in any way that she, Smithey, had been responsible for any false entries in either file. (Tr. 316-317.)

Discussion

A TDP may be invoked upon adequate evidence of irregularities in a contractor or grantee's past performance in a departmental program. 24 C.F.R. §24.18(a)(ii), or for causes listed at 24 C.F.R. §24.13(a)(2) as ground for suspension. Section 24.13(a)(2)(ii) states that such causes include those of "such serious and compelling nature, affecting responsibility", including "making or procuring to be made any false statement for the purpose of influencing in any way the action of the Department." The evidence to support a TDP must be adequate evidence that the charged conduct actually occurred and that it was done by the individual named. It is not sufficient that the evidence support a mere suspicion that such acts were done by the named individual. That is the evidentiary test for a suspension, not a TDP. In the Matter of Gary Snyder, HUDBCA No. 87-2407-D21 (Feb. 26, 1988.)

There are certain critical facts in this case upon which both parties agree. Someone altered verification of deposit forms in the Brown and Halford loan files to make it appear that a bank officer in each case had reverified cash assets on

deposit. The signatures of the bank officers on the "reverified" portions of the VODs were forged. The forgeries were very well executed, particularly the one of [REDACTED] Yancey in the Brown case. Whoever was forging the signatures of others was adept. These were not the only instances at Colonial of such occurrences. Forged and altered verifications were also found in case files with which Vivian Smithey had no connection. In fact, Smithey's signature may well have been forged on the Halford VOD "reverification" request. Ultimately, the TDP was imposed on Vivian Smithey for three reasons that the Government argues constitute adequate evidence that she committed the irregularities found: (1) she had the most to gain financially; (2) she "confessed" her guilt to [REDACTED] Russell; and (3) she was fired by Colonial.

The "fact" that Smithey had the most to gain financially was the fabric on which the TDP was pinned. Smithey was very successful financially. She alone earned about \$[REDACTED] in 1986. The commission on the Brown loan was \$230 and on the Halford loan, \$252. It stretches the imagination to believe that someone would jeopardize an \$[REDACTED] a year career for \$482. That level of financial "gain" was peanuts to Smithey when put in the context of her earnings. In contrast, although the loan processors were only paid out of a pool for loans closed plus an additional sum from the loan originators each month, those additional dollars would have been much more significant to them than \$482 would have been to Smithey. Financial gain in this case is an utterly worthless indicia of guilt. Individuals relate to money in different ways. Certainly, some people will abandon all ethical restraints for pennies, whether they need them or not. However, the record before me in no way establishes that Vivian Smithey is such a person. The fact that Smithey would have been paid more as a result of forging the two VODs than anyone else who had access to them is not evidence, adequate or otherwise, that she had anything to do with the altering of the VODs.

I find that the record before me does not contain adequate evidence that Smithey was the person who altered the two VODs. I found the testimony of [REDACTED] Russell to be unreliable, biased, and unconvincing. Russell disliked Smithey so much that she was not only eager to believe the very worst about Smithey, but to communicate it. Russell had no idea what the investigation at Colonial involved when she met up with Smithey immediately after Smithey's interview by Petrakis. Even taking Russell's own testimony about what Smithey did and what she said, I cannot find that it supports a finding that Smithey admitted to Russell that she caused the specific irregularities with which she is charged. Of course Smithey knew what the investigation was about by the time she had her meeting with Russell. I found that it was only Russell's wishful thinking that transformed Smithey's reactions into an admission of responsibility and guilt. It is indeed unfortunate that Garaffa chose to call Russell, the one person who disliked Vivian Smithey enough to create admissions of

wrongdoing out of whole cloth. The only evidence, written or oral, that would have supported a conclusion that Smithey was the person who altered the VODs was the biased and uninformed testimony of [REDACTED] Russell.

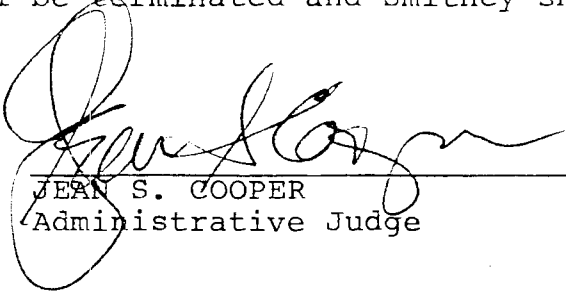
The only other evidence that can in any way be construed as supporting the charge that Smithey, rather than someone else, altered the VODs or caused them to be altered is Petrakis' investigative report. I give little or no weight to that report for a number of reasons. First, Petrakis failed to interview [REDACTED] Hughes, the loan processor in the Brown case. Second, Petrakis' report indicates that he did not like Smithey because she protested her innocence and lack of knowledge about how the alterations could have occurred but, beyond that, there appears little to support his inferred conclusion that she knew more than she admitted to him. To "know more" does not mean that Smithey did or caused the acts with which she is charged. I find Petrakis' report to be incomplete, shallow, and ultimately inconclusive of the facts that must be proven in this case to sustain the TDP against Smithey. Finally, Petrakis was not made available for oral examination. I find the hearsay in his report and the fact that his conclusions, such as they were, could not be tested by oral examination limit the reliability of his report so severely that it must be given little or no weight as adequate evidence that Vivian Smithey altered or caused to be altered the two VODs.

It is possible that Smithey altered the two VODs. It is also possible that [REDACTED] Hughes did it to protect herself because she was already in trouble for being so slow. She was the Colonial employee with a reputation for doing such things when under pressure. I found her to be a self-protective witness who played word games instead of giving direct answers to questions that she apparently believed could hurt her. Although [REDACTED] Cummings signed the Form 9-2900 as loan processor for the Halford loan, it may well have been one of the loan files turned over by Hughes to Cummings that were in such a mess. The dates are sufficiently close that such an inference is possible. Likewise, it is possible that Cummings did it herself so that the loan could close on time. It is also possible that [REDACTED] Belnap "created" the reverifications to cover up the fact that she has not been as careful as she should have been in her initial underwriting. Only Belnap could come up with a reason why there would have been a reverification in the Brown case in the first place. She has responsibility for underwriting all of the loans that were the subject of Petrakis' investigation, not just the loans originated by Smithey. This recitation of possible candidates for "whodunit" is meant as an illustration of the paucity of real evidence, reliable and probative--adequate--on which to decide who altered the VODs. A lot of players had "motives", imagined or otherwise, but a motive without evidence of action by that person is not adequate evidence that that

individual committed the acts. This record simply lacks the requisite adequate evidence that Smithey is the one "whodunit."

Conclusion

I find that, based on the record before me, there is not adequate evidence to conclude that Vivian Smithey either altered or caused to be altered the VODs in the Brown and Halford loans. For this reasons, the TDP shall be terminated and Smithey shall be immediately reinstated.


JEAN S. COOPER
Administrative Judge

Date: March 31, 1988